

DOCUMENT RESUME

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[Evaluation Criteria for Bids]. B-186771. July 20, 1977. 5 pp.

Decision re: Tennessee Valley Service Co.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Department of the Army: Army Missile Material Readiness Command; Maintenance, Inc.

Authority: A.S.P.R. 2-404.1. B-183695 (1975). 50 Comp. Gen. 583. 47 Comp. Gen. 658. 39 Comp. Gen. 834. 54 Comp. Gen. 145. 54 Comp. Gen. 237. 55 Comp. Gen. 592.

The protester objected to the cancellation of an invitation for bids and resolicitation of the requirement, alleging that the initial invitation was not ambiguous. Notwithstanding whether the award factor in the invitation for bids which was cancelled after bid opening may be considered to have improperly limited the bid evaluation to the unit prices without regard to the total contract cost, the only proper basis for the award was the low total contract cost. Since no bidder would have been prejudiced by proper evaluation of the bids, the canceled invitation should be reinstated and the award made thereunder. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-188771

DATE: July 20, 1977

MATTER OF: Tennessee Valley Service Company

DIGEST:

Notwithstanding whether award factor in IFB canceled after bid opening may be considered to have improperly limited bid evaluation to unit prices without regard to total contract cost, only proper basis for award is low total contract cost. Since no bidder would have been prejudiced by proper evaluation, canceled IFB should be reinstated and award made thereunder.

Invitation for bids (IFB) No. DAAH03-77-B-0023 for moving services was issued on February 18, 1977, by the United States Army Missile Materiel Readiness Command (MIRCOM). The solicitation's evaluation clause provided that "award will be made on the basis of lowest aggregate bid for all items specified in the schedule, Section E-Paragraph E-1. * * *." Paragraph E-1 of section E appeared, in part, as follows:

<u>"Item No.</u>	<u>Supplies/Services</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
0001AA	Moves within a building Monday thru Friday (Regular time)	1	man hr.		
0001AB	Moves within a building on Saturdays, Sundays, Holidays, and at other than normal working hours (overtime)	1	man hr.		
0001AC	Moves from building to building, Monday thru Friday (Regular time)	1	man hr.		
0001AD	Moves from building to building, Saturday, Sunday, Holidays, and at other than normal working hours (overtime)"	1	man hr.		

B-188771

Paragraph E-2 of section E stated:

"ESTIMATED QUANTITIES:

"The quantities listed below represent the best estimate available of quantities to be required during the term of this agreement and are not to be considered the actual quantities for which orders hereunder will be issued.

"Est. Hrs. Regular Time, Item 0001AA - 3,000 hours
Est. Hrs. Overtime, Item 0001AB - 100 hours
Est. Hrs. Regular Time, Item 0001AC - 7,000 hours
Est. Hrs. Overtime, Item 0001AD - 2,000 hours"

Shortly before bid opening on March 15, a bidder advised the contracting officer that it was unclear whether the unit prices were to be multiplied by the estimated quantities listed in paragraph E-2 in determining the aggregate bid. However, MIRCOM states that the contracting officer did not consider the issue sufficiently serious to warrant postponement of bid opening and amendment of the IFB to clarify the matter, particularly since all interested bidders were either already at MIRCOM for the bid opening or en route.

Seven bidders responded to the IFB. Four of those entered a unit (man-hour) price for each item, and multiplied unit prices by applicable estimated quantities to arrive at "amount" entries. Two bidders entered only unit prices. The remaining bidder, Maintenance, Inc. (Maintenance), entered unit prices, repeated those prices as its "amount" entries, and totaled the amount column. If the aggregate bid is determined by multiplying the unit prices by the applicable estimated quantities, Tennessee Valley Service Company (TVS) would be the low bidder. However, if the unit prices are simply added together, Maintenance would be low.

Upon noting the results of the bid opening, MIRCOM determined that the IFB was sufficiently ambiguous as to the stated method of evaluation to constitute a compelling reason to cancel the solicitation and readvertise. The IFB was canceled on March 30, and a resolicitation, IFB No. DAAH03-77-B-0030, was issued on that same date. The resolicitation's evaluation clause made it clear that award would be based on the low total aggregate bid for the estimated quantities specified, i.e., on the basis on which TVS was the low bidder under the first solicitation.

B-188771

Both TVS and Maintenance filed protests in our Office against the cancellation of IFB -0023 and the resolicitation, each contending that the initial IFB was not ambiguous and should be interpreted on the basis most favorable to its own bid. TVS also argues that, alternatively, the contracting officer, having been alerted to a potential problem prior to bid opening, should have taken the short time necessary to clarify the matter before bids were opened, postpone bid opening, or, if he considered the IFB unacceptably defective, cancel the solicitation. TVS further contends that even if the IFB was ambiguous, that fact would not constitute a compelling reason to cancel the IFB after bids were opened. In this connection, Armed Services Procurement Regulation § 2-404.1 (1976 ed.) provides, in pertinent part:

"Cancellation of Invitation After Opening

"(a) The preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. * * *"

Finally, TVS argues that the actual reason for the cancellation is unclear, that Maintenance does not qualify as a small business eligible to participate in this restricted procurement, and that TVS should be awarded the costs involved in preparing its initial bid.

Maintenance withdrew its protest when bid opening under IFB -0030 established Maintenance as the low bidder under the clarified evaluation criterion.

In Square Deal Trucking Co., Inc., B-183695, October 2, 1975, 75-2 CPD 206, we considered a solicitation evaluation clause that clearly stated that award would be based on low total unit prices, rather than on the low total bid as computed by multiplying stipulated estimated item quantities by unit prices. As in the present case, the low bidder on the basis of total unit price was not low on the basis of total price, and award was required by statute and regulation to be to that responsible bidder, whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. We stated therein as follows:

B-188771

"Our Office has consistently held this * * * [standard] to require award on the basis of the most favorable cost to the Government, assuming the responsiveness of the bid and the responsibility of the bidder. 47 Comp. Gen. 658 (1968). Moreover, we have stated that the lowest bidder must be measured by the total work to be awarded. 50 Comp. Gen. 583 (1971). If award, as here, is to be for a 1-year period, an award to a bidder who is low based on monthly [unit] prices, without regard to the extension of the bid prices for the total contract term, cannot be said to have been made to the 'lowest bidder.'"

In view thereof, and notwithstanding the evaluation clause of IFB -0023, the only proper way to evaluate the bids submitted here was to multiply unit prices by estimated quantities to determine the low bidder, in which case TVS would have been entitled to award if subsequently found responsible. In this connection, the fact that the estimated quantities are listed in paragraph E-2, although the evaluation clause refers only to paragraph E-1, would be irrelevant.

Moreover, in determining whether cancellation of the IFB on the basis that the evaluation criteria were ambiguous was proper, we need not decide whether Maintenance's interpretation of those criteria was reasonable and the IFB, therefore, in fact ambiguous. In Square Deal Trucking Co. Inc., supra, in which, as noted above, the only possible interpretation of the evaluation criteria was one that would have rendered an award pursuant thereto improper, we rejected the contracting agency's suggestion that it cancel and resolicit incorporating revised award factors, on the following basis:

"* * * There has been no showing that competition was adversely affected by the award provisions in the solicitation and, therefore, award can be made to the lowest properly evaluated bidder. This action would avoid an 'auction' atmosphere which would be present on a resolicitation. 50 Comp. Gen. * * * [583]."

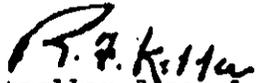
We believe that the same considerations apply in the present situation. Notwithstanding Maintenance's argument that award should be based on the low total of the unit prices, we do not see how any

B-188771

bidder could be prejudiced by having the contracting officer multiply the unit prices by the applicable estimated quantities to determine the low bidder. Thus, there was in fact no need to cancel IFB -0023 and create an auction situation by resoliciting for the requirement.

In view of the above, we consider that IFB -0023 was erroneously canceled, and no cogent or compelling reason exists to allow the cancellation to stand. Our Office has sanctioned the reinstatement of a canceled invitation in the past when to do so would work no prejudice on the right of others and would, in fact, promote the integrity of the public bidding system. 39 Comp. Gen. 834 (1960). The circumstances of this procurement appear to lend themselves to such a reinstatement. See Burley Machinery, Inc., 55 Comp. Gen. 592 (1975), 75-2 CPD 411; Joy Manufacturing Company, 54 Comp. Gen. 237 (1974), 74-2 CPD 183; Spickard Enterprises, Inc.; Cottrell Engineering Corporation, 54 Comp. Gen. 145 (1974), 74-2 CPD 121.

Accordingly, the protest of TVS is sustained, and award should be made to that firm under the initial solicitation, if otherwise proper. In view thereof, it is not necessary to consider TVS's remaining contentions.


Deputy Comptroller General
of the United States